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OFFICE OF PETITIONS

In re Application of :
Satoshi Seo :
Application No. 09/987,003 : DECISION ON PETITION
Filed: November 13, 2001 :
Attorney Docket No. 740756-2389 :

This is a decision on the petition under 37 CFR 1.8(b), filed May 1, 2006, to accept as timely paid the issue and publication fees. The petition is also being treated as a renewed petition under 37 CFR 1.313(c)(2) to withdraw this application from issue.

The petition under 37 CFR 1.8(b) is **GRANTED**.

The petition under 37 CFR 1.313(c)(2) is **GRANTED**.

DISCUSSION OF PETITION UNDER 37 CFR 1.8(b)

As noted in the decision on the petition to withdraw from issue mailed April 26, 2006, there is no indication in the file record for this application that the issue and publication fees were paid on or before March 20, 2006, as required by the Notice of Allowance and Fee(s) Due, mailed December 19, 2005.

In response to the decision, petitioner asserts that a timely reply to the Notice of December 19, 2005 was mailed via certificate of mailing on March 20, 2006. In support, petitioner has submitted a copy of the previously mailed correspondence (and check stated to have accompanied the correspondence), bearing a certificate of mailing, signed by Ms. Rose M. Fichtel, and dated March 20, 2006, which would have rendered the reply timely if received. The petition is also accompanied by a declaration by Ms. Fichtel attesting to the previous timely mailing of the issue and publication fees on March 20, 2006.

Office records fail to disclose receipt of the issue and publication fees asserted to have been previously submitted on

March 20, 2006. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the issue and publication fees are accepted as having been timely submitted via certificate of mailing on March 20, 2006.

The copy of the Part B - Fee(s) Transmittal received with the petition will be accepted in place of the transmittal established as having been mailed on March 20, 2006.

The \$1,718 check submitted will be applied towards the \$1,400 issue fee, the \$300 publication fee, and \$18 for six advanced copies of the patent.

DISCUSSION OF PETITION UNDER 37 CFR 1.313(c)(2)

Petitioner requests withdrawal from issue of the above application for consideration of an Information Disclosure Statement and an amendment. A Request for Continued Examination accompanied the petition to withdraw from issue.

The petition meets the requirements of 37 CFR 1.313(c) (2). Accordingly, this application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c) (2).

Petitioner is advised that the issue fee paid in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.¹

Telephone inquiries should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 2875 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement and amendment filed April 26, 2006.


Frances Hicks
Petitions Examiner
Office of Petitions

¹ *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission), which includes the following language thereon: “The Director of the USPTO is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee in the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).*